

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 27, 2016

SENATE BILL

No. 6

Introduced by Senator Galgiani
(Coauthor: Assembly Member Gonzalez.)

December 1, 2014

An act to amend Sections 1170 and 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as amended, Galgiani. Parole: medical parole: compassionate release.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law requires that a prisoner who is found to be permanently medically incapacitated, as specified, be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

Existing law authorizes a court to resentence or recall the sentence of a prisoner if the court finds that the prisoner is terminally ill, as specified, or the prisoner is permanently medically incapacitated, as specified, and, in either case, the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. Existing law exempts a prisoner sentenced to death or a term of

life without the possibility of parole from eligibility for compassionate release pursuant to these provisions.

This bill would additionally exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of the first-degree murder of a peace officer or a person who had been a peace officer, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 378 of the Statutes of 2015, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison or a term pursuant to subdivision (h) of any
29 specification of three time periods, the court shall sentence the

1 defendant to one of the terms of imprisonment specified unless
2 the convicted person is given any other disposition provided by
3 law, including a fine, jail, probation, or the suspension of
4 imposition or execution of sentence or is sentenced pursuant to
5 subdivision (b) of Section 1168 because he or she had committed
6 his or her crime prior to July 1, 1977. In sentencing the convicted
7 person, the court shall apply the sentencing rules of the Judicial
8 Council. The court, unless it determines that there are
9 circumstances in mitigation of the punishment prescribed, shall
10 also impose any other term that it is required by law to impose as
11 an additional term. Nothing in this article shall affect any provision
12 of law that imposes the death penalty, that authorizes or restricts
13 the granting of probation or suspending the execution or imposition
14 of sentence, or expressly provides for imprisonment in the state
15 prison for life, except as provided in paragraph (2) of subdivision
16 (d). In any case in which the amount of preimprisonment credit
17 under Section 2900.5 or any other law is equal to or exceeds any
18 sentence imposed pursuant to this chapter, except for the remaining
19 portion of mandatory supervision pursuant to subparagraph (B) of
20 paragraph (5) of subdivision (h), the entire sentence shall be
21 deemed to have been served, except for the remaining period of
22 mandatory supervision, and the defendant shall not be actually
23 delivered to the custody of the secretary or to the custody of the
24 county correctional administrator. The court shall advise the
25 defendant that he or she shall serve an applicable period of parole,
26 postrelease community supervision, or mandatory supervision,
27 and order the defendant to report to the parole or probation office
28 closest to the defendant's last legal residence, unless the in-custody
29 credits equal the total sentence, including both confinement time
30 and the period of parole, postrelease community supervision, or
31 mandatory supervision. The sentence shall be deemed a separate
32 prior prison term or a sentence of imprisonment in a county jail
33 under subdivision (h) for purposes of Section 667.5, and a copy
34 of the judgment and other necessary documentation shall be
35 forwarded to the secretary.

36 (b) When a judgment of imprisonment is to be imposed and the
37 statute specifies three possible terms, the choice of the appropriate
38 term shall rest within the sound discretion of the court. At least
39 four days prior to the time set for imposition of judgment, either
40 party or the victim, or the family of the victim if the victim is

1 deceased, may submit a statement in aggravation or mitigation. In
2 determining the appropriate term, the court may consider the record
3 in the case, the probation officer's report, other reports, including
4 reports received pursuant to Section 1203.03, and statements in
5 aggravation or mitigation submitted by the prosecution, the
6 defendant, or the victim, or the family of the victim if the victim
7 is deceased, and any further evidence introduced at the sentencing
8 hearing. The court shall select the term which, in the court's
9 discretion, best serves the interests of justice. The court shall set
10 forth on the record the reasons for imposing the term selected and
11 the court may not impose an upper term by using the fact of any
12 enhancement upon which sentence is imposed under any provision
13 of law. A term of imprisonment shall not be specified if imposition
14 of sentence is suspended.

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000 or 3000.08 or postrelease community supervision for a period
20 as provided in Section 3451.

21 (d) (1) When a defendant subject to this section or subdivision
22 (b) of Section 1168 has been sentenced to be imprisoned in the
23 state prison or county jail pursuant to subdivision (h) and has been
24 committed to the custody of the secretary or the county correctional
25 administrator, the court may, within 120 days of the date of
26 commitment on its own motion, or at any time upon the
27 recommendation of the secretary or the Board of Parole Hearings
28 in the case of state prison inmates, or the county correctional
29 administrator in the case of county jail inmates, recall the sentence
30 and commitment previously ordered and resentence the defendant
31 in the same manner as if he or she had not previously been
32 sentenced, provided the new sentence, if any, is no greater than
33 the initial sentence. The court resentencing under this subdivision
34 shall apply the sentencing rules of the Judicial Council so as to
35 eliminate disparity of sentences and to promote uniformity of
36 sentencing. Credit shall be given for time served.

37 (2) (A) (i) When a defendant who was under 18 years of age
38 at the time of the commission of the offense for which the
39 defendant was sentenced to imprisonment for life without the
40 possibility of parole has served at least 15 years of that sentence,

1 the defendant may submit to the sentencing court a petition for
2 recall and resentencing.

3 (ii) Notwithstanding clause (i), this paragraph shall not apply
4 to defendants sentenced to life without parole for an offense where
5 the defendant tortured, as described in Section 206, his or her
6 victim or the victim was a public safety official, including any law
7 enforcement personnel mentioned in Chapter 4.5 (commencing
8 with Section 830) of Title 3, or any firefighter as described in
9 Section 245.1, as well as any other officer in any segment of law
10 enforcement who is employed by the federal government, the state,
11 or any of its political subdivisions.

12 (B) The defendant shall file the original petition with the
13 sentencing court. A copy of the petition shall be served on the
14 agency that prosecuted the case. The petition shall include the
15 defendant's statement that he or she was under 18 years of age at
16 the time of the crime and was sentenced to life in prison without
17 the possibility of parole, the defendant's statement describing his
18 or her remorse and work towards rehabilitation, and the defendant's
19 statement that one of the following is true:

20 (i) The defendant was convicted pursuant to felony murder or
21 aiding and abetting murder provisions of law.

22 (ii) The defendant does not have juvenile felony adjudications
23 for assault or other felony crimes with a significant potential for
24 personal harm to victims prior to the offense for which the sentence
25 is being considered for recall.

26 (iii) The defendant committed the offense with at least one adult
27 codefendant.

28 (iv) The defendant has performed acts that tend to indicate
29 rehabilitation or the potential for rehabilitation, including, but not
30 limited to, availing himself or herself of rehabilitative, educational,
31 or vocational programs, if those programs have been available at
32 his or her classification level and facility, using self-study for
33 self-improvement, or showing evidence of remorse.

34 (C) If any of the information required in subparagraph (B) is
35 missing from the petition, or if proof of service on the prosecuting
36 agency is not provided, the court shall return the petition to the
37 defendant and advise the defendant that the matter cannot be
38 considered without the missing information.

39 (D) A reply to the petition, if any, shall be filed with the court
40 within 60 days of the date on which the prosecuting agency was

1 served with the petition, unless a continuance is granted for good
2 cause.

3 (E) If the court finds by a preponderance of the evidence that
4 the statements in the petition are true, the court shall hold a hearing
5 to consider whether to recall the sentence and commitment
6 previously ordered and to resentence the defendant in the same
7 manner as if the defendant had not previously been sentenced,
8 provided that the new sentence, if any, is not greater than the initial
9 sentence. Victims, or victim family members if the victim is
10 deceased, shall retain the rights to participate in the hearing.

11 (F) The factors that the court may consider when determining
12 whether to recall and resentence include, but are not limited to,
13 the following:

14 (i) The defendant was convicted pursuant to felony murder or
15 aiding and abetting murder provisions of law.

16 (ii) The defendant does not have juvenile felony adjudications
17 for assault or other felony crimes with a significant potential for
18 personal harm to victims prior to the offense for which the sentence
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult
21 codefendant.

22 (iv) Prior to the offense for which the sentence is being
23 considered for recall, the defendant had insufficient adult support
24 or supervision and had suffered from psychological or physical
25 trauma, or significant stress.

26 (v) The defendant suffers from cognitive limitations due to
27 mental illness, developmental disabilities, or other factors that did
28 not constitute a defense, but influenced the defendant's
29 involvement in the offense.

30 (vi) The defendant has performed acts that tend to indicate
31 rehabilitation or the potential for rehabilitation, including, but not
32 limited to, availing himself or herself of rehabilitative, educational,
33 or vocational programs, if those programs have been available at
34 his or her classification level and facility, using self-study for
35 self-improvement, or showing evidence of remorse.

36 (vii) The defendant has maintained family ties or connections
37 with others through letter writing, calls, or visits, or has eliminated
38 contact with individuals outside of prison who are currently
39 involved with crime.

1 (viii) The defendant has had no disciplinary actions for violent
2 activities in the last five years in which the defendant was
3 determined to be the aggressor.

4 (G) The court shall have the discretion to recall the sentence
5 and commitment previously ordered and to resentence the
6 defendant in the same manner as if the defendant had not
7 previously been sentenced, provided that the new sentence, if any,
8 is not greater than the initial sentence. The discretion of the court
9 shall be exercised in consideration of the criteria in subparagraph
10 (B). Victims, or victim family members if the victim is deceased,
11 shall be notified of the resentencing hearing and shall retain their
12 rights to participate in the hearing.

13 (H) If the sentence is not recalled, the defendant may submit
14 another petition for recall and resentencing to the sentencing court
15 when the defendant has been committed to the custody of the
16 department for at least 20 years. If recall and resentencing is not
17 granted under that petition, the defendant may file another petition
18 after having served 24 years. The final petition may be submitted,
19 and the response to that petition shall be determined, during the
20 25th year of the defendant's sentence.

21 (I) In addition to the criteria in subparagraph (F), the court may
22 consider any other criteria that the court deems relevant to its
23 decision, so long as the court identifies them on the record,
24 provides a statement of reasons for adopting them, and states why
25 the defendant does or does not satisfy the criteria.

26 (J) This subdivision shall have retroactive application.

27 (e) (1) Notwithstanding any other law and consistent with
28 paragraph (1) of subdivision (a), if the secretary or the Board of
29 Parole Hearings or both determine that a prisoner satisfies the
30 criteria set forth in paragraph (2), the secretary or the board may
31 recommend to the court that the prisoner's sentence be recalled.

32 (2) (A) The court shall have the discretion to resentence or
33 recall if the court finds that the facts described in clauses (i) and
34 (ii) or clauses (ii) and (iii) exist:

35 (i) The prisoner is terminally ill with an incurable condition
36 caused by an illness or disease that would produce death within
37 six months, as determined by a physician employed by the
38 department.

39 (ii) The conditions under which the prisoner would be released
40 or receive treatment do not pose a threat to public safety.

1 (iii) The prisoner is permanently medically incapacitated with
2 a medical condition that renders him or her permanently unable
3 to perform activities of basic daily living, and results in the prisoner
4 requiring 24-hour total care, including, but not limited to, coma,
5 persistent vegetative state, brain death, ventilator-dependency, loss
6 of control of muscular or neurological function, and that
7 incapacitation did not exist at the time of the original sentencing.

8 (B) This subdivision does not apply to the following:

9 (i) A prisoner sentenced to death or a term of life without the
10 possibility of parole.

11 (ii) A prisoner who was convicted of first-degree murder if the
12 victim was a peace officer, as defined in Section 830.1, 830.2,
13 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,
14 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed
15 while engaged in the performance of his or her duties, and the
16 individual knew, or reasonably should have known, that the victim
17 was a peace officer engaged in the performance of his or her duties,
18 or the victim was a peace officer or a former peace officer under
19 any of the above-enumerated sections, and was intentionally killed
20 in retaliation for the performance of his or her official duties.

21 (C) The Board of Parole Hearings shall make findings pursuant
22 to this subdivision before making a recommendation for resentence
23 or recall to the court.

24 (3) Within 10 days of receipt of a positive recommendation by
25 the secretary or the board, the court shall hold a hearing to consider
26 whether the prisoner's sentence should be recalled.

27 (4) Any physician employed by the department who determines
28 that a prisoner has six months or less to live shall notify the chief
29 medical officer of the prognosis. If the chief medical officer
30 concurs with the prognosis, he or she shall notify the warden.
31 Within 48 hours of receiving notification, the warden or the
32 warden's representative shall notify the prisoner of the recall and
33 resentencing procedures, and shall arrange for the prisoner to
34 designate a family member or other outside agent to be notified
35 as to the prisoner's medical condition and prognosis, and as to the
36 recall and resentencing procedures. If the inmate is deemed
37 mentally unfit, the warden or the warden's representative shall
38 contact the inmate's emergency contact and provide the information
39 described in paragraph (2).

1 (5) The warden or the warden's representative shall provide the
2 prisoner and his or her family member, agent, or emergency
3 contact, as described in paragraph (4), updated information
4 throughout the recall and resentencing process with regard to the
5 prisoner's medical condition and the status of the prisoner's recall
6 and resentencing proceedings.

7 (6) Notwithstanding any other provisions of this section, the
8 prisoner or his or her family member or designee may
9 independently request consideration for recall and resentencing
10 by contacting the chief medical officer at the prison or the
11 secretary. Upon receipt of the request, the chief medical officer
12 and the warden or the warden's representative shall follow the
13 procedures described in paragraph (4). If the secretary determines
14 that the prisoner satisfies the criteria set forth in paragraph (2), the
15 secretary or board may recommend to the court that the prisoner's
16 sentence be recalled. The secretary shall submit a recommendation
17 for release within 30 days in the case of inmates sentenced to
18 determinate terms and, in the case of inmates sentenced to
19 indeterminate terms, the secretary shall make a recommendation
20 to the Board of Parole Hearings with respect to the inmates who
21 have applied under this section. The board shall consider this
22 information and make an independent judgment pursuant to
23 paragraph (2) and make findings related thereto before rejecting
24 the request or making a recommendation to the court. This action
25 shall be taken at the next lawfully noticed board meeting.

26 (7) Any recommendation for recall submitted to the court by
27 the secretary or the Board of Parole Hearings shall include one or
28 more medical evaluations, a postrelease plan, and findings pursuant
29 to paragraph (2).

30 (8) If possible, the matter shall be heard before the same judge
31 of the court who sentenced the prisoner.

32 (9) If the court grants the recall and resentencing application,
33 the prisoner shall be released by the department within 48 hours
34 of receipt of the court's order, unless a longer time period is agreed
35 to by the inmate. At the time of release, the warden or the warden's
36 representative shall ensure that the prisoner has each of the
37 following in his or her possession: a discharge medical summary,
38 full medical records, state identification, parole or postrelease
39 community supervision medications, and all property belonging

1 to the prisoner. After discharge, any additional records shall be
2 sent to the prisoner's forwarding address.

3 (10) The secretary shall issue a directive to medical and
4 correctional staff employed by the department that details the
5 guidelines and procedures for initiating a recall and resentencing
6 procedure. The directive shall clearly state that any prisoner who
7 is given a prognosis of six months or less to live is eligible for
8 recall and resentencing consideration, and that recall and
9 resentencing procedures shall be initiated upon that prognosis.

10 (11) The provisions of this subdivision shall be available to an
11 inmate who is sentenced to a county jail pursuant to subdivision
12 (h). For purposes of those inmates, "secretary" or "warden" shall
13 mean the county correctional administrator and "chief medical
14 officer" shall mean a physician designated by the county
15 correctional administrator for this purpose.

16 (f) Notwithstanding any other provision of this section, for
17 purposes of paragraph (3) of subdivision (h), any allegation that
18 a defendant is eligible for state prison due to a prior or current
19 conviction, sentence enhancement, or because he or she is required
20 to register as a sex offender shall not be subject to dismissal
21 pursuant to Section 1385.

22 (g) A sentence to state prison for a determinate term for which
23 only one term is specified, is a sentence to state prison under this
24 section.

25 (h) (1) Except as provided in paragraph (3), a felony punishable
26 pursuant to this subdivision where the term is not specified in the
27 underlying offense shall be punishable by a term of imprisonment
28 in a county jail for 16 months, or two or three years.

29 (2) Except as provided in paragraph (3), a felony punishable
30 pursuant to this subdivision shall be punishable by imprisonment
31 in a county jail for the term described in the underlying offense.

32 (3) Notwithstanding paragraphs (1) and (2), where the defendant
33 (A) has a prior or current felony conviction for a serious felony
34 described in subdivision (c) of Section 1192.7 or a prior or current
35 conviction for a violent felony described in subdivision (c) of
36 Section 667.5, (B) has a prior felony conviction in another
37 jurisdiction for an offense that has all the elements of a serious
38 felony described in subdivision (c) of Section 1192.7 or a violent
39 felony described in subdivision (c) of Section 667.5, (C) is required
40 to register as a sex offender pursuant to Chapter 5.5 (commencing

1 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
2 and as part of the sentence an enhancement pursuant to Section
3 186.11 is imposed, an executed sentence for a felony punishable
4 pursuant to this subdivision shall be served in state prison.

5 (4) Nothing in this subdivision shall be construed to prevent
6 other dispositions authorized by law, including pretrial diversion,
7 deferred entry of judgment, or an order granting probation pursuant
8 to Section 1203.1.

9 (5) (A) Unless the court finds that, in the interests of justice, it
10 is not appropriate in a particular case, the court, when imposing a
11 sentence pursuant to paragraph (1) or (2), shall suspend execution
12 of a concluding portion of the term for a period selected at the
13 court's discretion.

14 (B) The portion of a defendant's sentenced term that is
15 suspended pursuant to this paragraph shall be known as mandatory
16 supervision, and, unless otherwise ordered by the court, shall
17 commence upon release from physical custody or an alternative
18 custody program, whichever is later. During the period of
19 mandatory supervision, the defendant shall be supervised by the
20 county probation officer in accordance with the terms, conditions,
21 and procedures generally applicable to persons placed on probation,
22 for the remaining unserved portion of the sentence imposed by the
23 court. The period of supervision shall be mandatory, and may not
24 be earlier terminated except by court order. Any proceeding to
25 revoke or modify mandatory supervision under this subparagraph
26 shall be conducted pursuant to either subdivisions (a) and (b) of
27 Section 1203.2 or Section 1203.3. During the period when the
28 defendant is under that supervision, unless in actual custody related
29 to the sentence imposed by the court, the defendant shall be entitled
30 to only actual time credit against the term of imprisonment imposed
31 by the court. Any time period which is suspended because a person
32 has absconded shall not be credited toward the period of
33 supervision.

34 (6) The sentencing changes made by the act that added this
35 subdivision shall be applied prospectively to any person sentenced
36 on or after October 1, 2011.

37 (7) The sentencing changes made to paragraph (5) by the act
38 that added this paragraph shall become effective and operative on
39 January 1, 2015, and shall be applied prospectively to any person
40 sentenced on or after January 1, 2015.

1 (i) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before that date, deletes or extends that date.

4 SEC. 2. Section 1170 of the Penal Code, as amended by Section
5 2 of Chapter 378 of the Statutes of 2015, is amended to read:

6 1170. (a) (1) The Legislature finds and declares that the
7 purpose of imprisonment for crime is punishment. This purpose
8 is best served by terms proportionate to the seriousness of the
9 offense with provision for uniformity in the sentences of offenders
10 committing the same offense under similar circumstances. The
11 Legislature further finds and declares that the elimination of
12 disparity and the provision of uniformity of sentences can best be
13 achieved by determinate sentences fixed by statute in proportion
14 to the seriousness of the offense as determined by the Legislature
15 to be imposed by the court with specified discretion.

16 (2) Notwithstanding paragraph (1), the Legislature further finds
17 and declares that programs should be available for inmates,
18 including, but not limited to, educational programs, that are
19 designed to prepare nonviolent felony offenders for successful
20 reentry into the community. The Legislature encourages the
21 development of policies and programs designed to educate and
22 rehabilitate nonviolent felony offenders. In implementing this
23 section, the Department of Corrections and Rehabilitation is
24 encouraged to give priority enrollment in programs to promote
25 successful return to the community to an inmate with a short
26 remaining term of commitment and a release date that would allow
27 him or her adequate time to complete the program.

28 (3) In any case in which the punishment prescribed by statute
29 for a person convicted of a public offense is a term of imprisonment
30 in the state prison, or a term pursuant to subdivision (h), of any
31 specification of three time periods, the court shall sentence the
32 defendant to one of the terms of imprisonment specified unless
33 the convicted person is given any other disposition provided by
34 law, including a fine, jail, probation, or the suspension of
35 imposition or execution of sentence or is sentenced pursuant to
36 subdivision (b) of Section 1168 because he or she had committed
37 his or her crime prior to July 1, 1977. In sentencing the convicted
38 person, the court shall apply the sentencing rules of the Judicial
39 Council. The court, unless it determines that there are
40 circumstances in mitigation of the punishment prescribed, shall

1 also impose any other term that it is required by law to impose as
2 an additional term. Nothing in this article shall affect any provision
3 of law that imposes the death penalty, that authorizes or restricts
4 the granting of probation or suspending the execution or imposition
5 of sentence, or expressly provides for imprisonment in the state
6 prison for life, except as provided in paragraph (2) of subdivision
7 (d). In any case in which the amount of preimprisonment credit
8 under Section 2900.5 or any other provision of law is equal to or
9 exceeds any sentence imposed pursuant to this chapter, except for
10 a remaining portion of mandatory supervision imposed pursuant
11 to subparagraph (B) of paragraph (5) of subdivision (h), the entire
12 sentence shall be deemed to have been served, except for the
13 remaining period of mandatory supervision, and the defendant
14 shall not be actually delivered to the custody of the secretary or
15 the county correctional administrator. The court shall advise the
16 defendant that he or she shall serve an applicable period of parole,
17 postrelease community supervision, or mandatory supervision and
18 order the defendant to report to the parole or probation office
19 closest to the defendant's last legal residence, unless the in-custody
20 credits equal the total sentence, including both confinement time
21 and the period of parole, postrelease community supervision, or
22 mandatory supervision. The sentence shall be deemed a separate
23 prior prison term or a sentence of imprisonment in a county jail
24 under subdivision (h) for purposes of Section 667.5, and a copy
25 of the judgment and other necessary documentation shall be
26 forwarded to the secretary.

27 (b) When a judgment of imprisonment is to be imposed and the
28 statute specifies three possible terms, the court shall order
29 imposition of the middle term, unless there are circumstances in
30 aggravation or mitigation of the crime. At least four days prior to
31 the time set for imposition of judgment, either party or the victim,
32 or the family of the victim if the victim is deceased, may submit
33 a statement in aggravation or mitigation to dispute facts in the
34 record or the probation officer's report, or to present additional
35 facts. In determining whether there are circumstances that justify
36 imposition of the upper or lower term, the court may consider the
37 record in the case, the probation officer's report, other reports,
38 including reports received pursuant to Section 1203.03, and
39 statements in aggravation or mitigation submitted by the
40 prosecution, the defendant, or the victim, or the family of the victim

1 if the victim is deceased, and any further evidence introduced at
2 the sentencing hearing. The court shall set forth on the record the
3 facts and reasons for imposing the upper or lower term. The court
4 may not impose an upper term by using the fact of any
5 enhancement upon which sentence is imposed under any provision
6 of law. A term of imprisonment shall not be specified if imposition
7 of sentence is suspended.

8 (c) The court shall state the reasons for its sentence choice on
9 the record at the time of sentencing. The court shall also inform
10 the defendant that as part of the sentence after expiration of the
11 term he or she may be on parole for a period as provided in Section
12 3000 or 3000.08 or postrelease community supervision for a period
13 as provided in Section 3451.

14 (d) (1) When a defendant subject to this section or subdivision
15 (b) of Section 1168 has been sentenced to be imprisoned in the
16 state prison or county jail pursuant to subdivision (h) and has been
17 committed to the custody of the secretary or the county correctional
18 administrator, the court may, within 120 days of the date of
19 commitment on its own motion, or at any time upon the
20 recommendation of the secretary or the Board of Parole Hearings
21 in the case of state prison inmates, or the county correctional
22 administrator in the case of county jail inmates, recall the sentence
23 and commitment previously ordered and resentence the defendant
24 in the same manner as if he or she had not previously been
25 sentenced, provided the new sentence, if any, is no greater than
26 the initial sentence. The court resentencing under this subdivision
27 shall apply the sentencing rules of the Judicial Council so as to
28 eliminate disparity of sentences and to promote uniformity of
29 sentencing. Credit shall be given for time served.

30 (2) (A) (i) When a defendant who was under 18 years of age
31 at the time of the commission of the offense for which the
32 defendant was sentenced to imprisonment for life without the
33 possibility of parole has served at least 15 years of that sentence,
34 the defendant may submit to the sentencing court a petition for
35 recall and resentencing.

36 (ii) Notwithstanding clause (i), this paragraph shall not apply
37 to defendants sentenced to life without parole for an offense where
38 the defendant tortured, as described in Section 206, his or her
39 victim or the victim was a public safety official, including any law
40 enforcement personnel mentioned in Chapter 4.5 (commencing

1 with Section 830) of Title 3, or any firefighter as described in
2 Section 245.1, as well as any other officer in any segment of law
3 enforcement who is employed by the federal government, the state,
4 or any of its political subdivisions.

5 (B) The defendant shall file the original petition with the
6 sentencing court. A copy of the petition shall be served on the
7 agency that prosecuted the case. The petition shall include the
8 defendant's statement that he or she was under 18 years of age at
9 the time of the crime and was sentenced to life in prison without
10 the possibility of parole, the defendant's statement describing his
11 or her remorse and work towards rehabilitation, and the defendant's
12 statement that one of the following is true:

13 (i) The defendant was convicted pursuant to felony murder or
14 aiding and abetting murder provisions of law.

15 (ii) The defendant does not have juvenile felony adjudications
16 for assault or other felony crimes with a significant potential for
17 personal harm to victims prior to the offense for which the sentence
18 is being considered for recall.

19 (iii) The defendant committed the offense with at least one adult
20 codefendant.

21 (iv) The defendant has performed acts that tend to indicate
22 rehabilitation or the potential for rehabilitation, including, but not
23 limited to, availing himself or herself of rehabilitative, educational,
24 or vocational programs, if those programs have been available at
25 his or her classification level and facility, using self-study for
26 self-improvement, or showing evidence of remorse.

27 (C) If any of the information required in subparagraph (B) is
28 missing from the petition, or if proof of service on the prosecuting
29 agency is not provided, the court shall return the petition to the
30 defendant and advise the defendant that the matter cannot be
31 considered without the missing information.

32 (D) A reply to the petition, if any, shall be filed with the court
33 within 60 days of the date on which the prosecuting agency was
34 served with the petition, unless a continuance is granted for good
35 cause.

36 (E) If the court finds by a preponderance of the evidence that
37 the statements in the petition are true, the court shall hold a hearing
38 to consider whether to recall the sentence and commitment
39 previously ordered and to resentence the defendant in the same
40 manner as if the defendant had not previously been sentenced,

1 provided that the new sentence, if any, is not greater than the initial
2 sentence. Victims, or victim family members if the victim is
3 deceased, shall retain the rights to participate in the hearing.

4 (F) The factors that the court may consider when determining
5 whether to recall and resentence include, but are not limited to,
6 the following:

7 (i) The defendant was convicted pursuant to felony murder or
8 aiding and abetting murder provisions of law.

9 (ii) The defendant does not have juvenile felony adjudications
10 for assault or other felony crimes with a significant potential for
11 personal harm to victims prior to the offense for which the sentence
12 is being considered for recall.

13 (iii) The defendant committed the offense with at least one adult
14 codefendant.

15 (iv) Prior to the offense for which the sentence is being
16 considered for recall, the defendant had insufficient adult support
17 or supervision and had suffered from psychological or physical
18 trauma, or significant stress.

19 (v) The defendant suffers from cognitive limitations due to
20 mental illness, developmental disabilities, or other factors that did
21 not constitute a defense, but influenced the defendant's
22 involvement in the offense.

23 (vi) The defendant has performed acts that tend to indicate
24 rehabilitation or the potential for rehabilitation, including, but not
25 limited to, availing himself or herself of rehabilitative, educational,
26 or vocational programs, if those programs have been available at
27 his or her classification level and facility, using self-study for
28 self-improvement, or showing evidence of remorse.

29 (vii) The defendant has maintained family ties or connections
30 with others through letter writing, calls, or visits, or has eliminated
31 contact with individuals outside of prison who are currently
32 involved with crime.

33 (viii) The defendant has had no disciplinary actions for violent
34 activities in the last five years in which the defendant was
35 determined to be the aggressor.

36 (G) The court shall have the discretion to recall the sentence
37 and commitment previously ordered and to resentence the
38 defendant in the same manner as if the defendant had not
39 previously been sentenced, provided that the new sentence, if any,
40 is not greater than the initial sentence. The discretion of the court

1 shall be exercised in consideration of the criteria in subparagraph
2 (B). Victims, or victim family members if the victim is deceased,
3 shall be notified of the resentencing hearing and shall retain their
4 rights to participate in the hearing.

5 (H) If the sentence is not recalled, the defendant may submit
6 another petition for recall and resentencing to the sentencing court
7 when the defendant has been committed to the custody of the
8 department for at least 20 years. If recall and resentencing is not
9 granted under that petition, the defendant may file another petition
10 after having served 24 years. The final petition may be submitted,
11 and the response to that petition shall be determined, during the
12 25th year of the defendant's sentence.

13 (I) In addition to the criteria in subparagraph (F), the court may
14 consider any other criteria that the court deems relevant to its
15 decision, so long as the court identifies them on the record,
16 provides a statement of reasons for adopting them, and states why
17 the defendant does or does not satisfy the criteria.

18 (J) This subdivision shall have retroactive application.

19 (e) (1) Notwithstanding any other law and consistent with
20 paragraph (1) of subdivision (a), if the secretary or the Board of
21 Parole Hearings or both determine that a prisoner satisfies the
22 criteria set forth in paragraph (2), the secretary or the board may
23 recommend to the court that the prisoner's sentence be recalled.

24 (2) (A) The court shall have the discretion to resentence or
25 recall if the court finds that the facts described in clauses (i) and
26 (ii) or clauses (ii) and (iii) exist:

27 (i) The prisoner is terminally ill with an incurable condition
28 caused by an illness or disease that would produce death within
29 six months, as determined by a physician employed by the
30 department.

31 (ii) The conditions under which the prisoner would be released
32 or receive treatment do not pose a threat to public safety.

33 (iii) The prisoner is permanently medically incapacitated with
34 a medical condition that renders him or her permanently unable
35 to perform activities of basic daily living, and results in the prisoner
36 requiring 24-hour total care, including, but not limited to, coma,
37 persistent vegetative state, brain death, ventilator-dependency, loss
38 of control of muscular or neurological function, and that
39 incapacitation did not exist at the time of the original sentencing.

40 (B) This subdivision does not apply to the following:

1 (i) A prisoner sentenced to death or a term of life without the
2 possibility of parole.

3 (ii) A prisoner who was convicted of first-degree murder if the
4 victim was a peace officer, as defined in Section 830.1, 830.2,
5 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,
6 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed
7 while engaged in the performance of his or her duties, and the
8 individual knew, or reasonably should have known, that the victim
9 was a peace officer engaged in the performance of his or her duties,
10 or the victim was a peace officer or a former peace officer under
11 any of the above-enumerated sections, and was intentionally killed
12 in retaliation for the performance of his or her official duties.

13 (C) The Board of Parole Hearings shall make findings pursuant
14 to this subdivision before making a recommendation for resentence
15 or recall to the court.

16 (3) Within 10 days of receipt of a positive recommendation by
17 the secretary or the board, the court shall hold a hearing to consider
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines
20 that a prisoner has six months or less to live shall notify the chief
21 medical officer of the prognosis. If the chief medical officer
22 concurs with the prognosis, he or she shall notify the warden.
23 Within 48 hours of receiving notification, the warden or the
24 warden's representative shall notify the prisoner of the recall and
25 resentencing procedures, and shall arrange for the prisoner to
26 designate a family member or other outside agent to be notified
27 as to the prisoner's medical condition and prognosis, and as to the
28 recall and resentencing procedures. If the inmate is deemed
29 mentally unfit, the warden or the warden's representative shall
30 contact the inmate's emergency contact and provide the information
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the
33 prisoner and his or her family member, agent, or emergency
34 contact, as described in paragraph (4), updated information
35 throughout the recall and resentencing process with regard to the
36 prisoner's medical condition and the status of the prisoner's recall
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the
2 secretary. Upon receipt of the request, the chief medical officer
3 and the warden or the warden's representative shall follow the
4 procedures described in paragraph (4). If the secretary determines
5 that the prisoner satisfies the criteria set forth in paragraph (2), the
6 secretary or board may recommend to the court that the prisoner's
7 sentence be recalled. The secretary shall submit a recommendation
8 for release within 30 days in the case of inmates sentenced to
9 determinate terms and, in the case of inmates sentenced to
10 indeterminate terms, the secretary shall make a recommendation
11 to the Board of Parole Hearings with respect to the inmates who
12 have applied under this section. The board shall consider this
13 information and make an independent judgment pursuant to
14 paragraph (2) and make findings related thereto before rejecting
15 the request or making a recommendation to the court. This action
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by
18 the secretary or the Board of Parole Hearings shall include one or
19 more medical evaluations, a postrelease plan, and findings pursuant
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,
24 the prisoner shall be released by the department within 48 hours
25 of receipt of the court's order, unless a longer time period is agreed
26 to by the inmate. At the time of release, the warden or the warden's
27 representative shall ensure that the prisoner has each of the
28 following in his or her possession: a discharge medical summary,
29 full medical records, state identification, parole or postrelease
30 community supervision medications, and all property belonging
31 to the prisoner. After discharge, any additional records shall be
32 sent to the prisoner's forwarding address.

33 (10) The secretary shall issue a directive to medical and
34 correctional staff employed by the department that details the
35 guidelines and procedures for initiating a recall and resentencing
36 procedure. The directive shall clearly state that any prisoner who
37 is given a prognosis of six months or less to live is eligible for
38 recall and resentencing consideration, and that recall and
39 resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, “secretary” or “warden” shall mean the county correctional administrator and “chief medical officer” shall mean a physician designated by the county correctional administrator for this purpose.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

1 (5) (A) Unless the court finds, in the interest of justice, that it
2 is not appropriate in a particular case, the court, when imposing a
3 sentence pursuant to paragraph (1) or (2), shall suspend execution
4 of a concluding portion of the term for a period selected at the
5 court's discretion.

6 (B) The portion of a defendant's sentenced term that is
7 suspended pursuant to this paragraph shall be known as mandatory
8 supervision, and, unless otherwise ordered by the court, shall
9 commence upon release from physical custody or an alternative
10 custody program, whichever is later. During the period of
11 mandatory supervision, the defendant shall be supervised by the
12 county probation officer in accordance with the terms, conditions,
13 and procedures generally applicable to persons placed on probation,
14 for the remaining unserved portion of the sentence imposed by the
15 court. The period of supervision shall be mandatory, and may not
16 be earlier terminated except by court order. Any proceeding to
17 revoke or modify mandatory supervision under this subparagraph
18 shall be conducted pursuant to either subdivisions (a) and (b) of
19 Section 1203.2 or Section 1203.3. During the period when the
20 defendant is under that supervision, unless in actual custody related
21 to the sentence imposed by the court, the defendant shall be entitled
22 to only actual time credit against the term of imprisonment imposed
23 by the court. Any time period which is suspended because a person
24 has absconded shall not be credited toward the period of
25 supervision.

26 (6) The sentencing changes made by the act that added this
27 subdivision shall be applied prospectively to any person sentenced
28 on or after October 1, 2011.

29 (7) The sentencing changes made to paragraph (5) by the act
30 that added this paragraph shall become effective and operative on
31 January 1, 2015, and shall be applied prospectively to any person
32 sentenced on or after January 1, 2015.

33 (i) This section shall become operative on January 1, 2017.

34 SEC. 3. Section 3550 of the Penal Code is amended to read:

35 3550. (a) Notwithstanding any other ~~provision of law~~, except
36 as provided in subdivision (b), if the head physician of an
37 institution in which a prisoner is incarcerated determines, as
38 provided in this section, that the prisoner is permanently medically
39 incapacitated with a medical condition that renders him or her
40 permanently unable to perform activities of basic daily living, and

1 results in the prisoner requiring 24-hour care, and that
2 incapacitation did not exist at the time of sentencing, the prisoner
3 shall be granted medical parole if the Board of Parole Hearings
4 determines that the conditions under which he or she would be
5 released would not reasonably pose a threat to public safety.

6 (b) This section does not alter or diminish the rights conferred
7 under the Victims' Bill of Rights Act of 2008 (Marsy's Law).
8 Subdivision (a) does not apply to any of the following:

9 (1) A prisoner sentenced to death or life in prison without
10 possibility of parole.

11 (2) A prisoner who is serving a sentence for which parole,
12 pursuant to subdivision (a), is prohibited by any initiative statute.

13 (3) A prisoner who was convicted of first-degree murder if the
14 victim was a peace officer, as defined in Section 830.1, 830.2,
15 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,
16 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed
17 while engaged in the performance of his or her duties, and the
18 individual knew, or reasonably should have known, that the victim
19 was a peace officer engaged in the performance of his or her duties,
20 or the victim was a peace officer or a former peace officer under
21 any of the above-enumerated sections, and was intentionally killed
22 in retaliation for the performance of his or her official duties.

23 (c) When a physician employed by the Department of
24 Corrections and Rehabilitation who is the primary care provider
25 for a prisoner identifies a prisoner that he or she believes meets
26 the medical criteria for medical parole specified in subdivision (a),
27 the primary care physician shall recommend to the head physician
28 of the institution where the prisoner is located that the prisoner be
29 referred to the Board of Parole Hearings for consideration for
30 medical parole. Within 30 days of receiving that recommendation,
31 if the head physician of the institution concurs in the
32 recommendation of the primary care physician, he or she shall
33 refer the matter to the Board of Parole Hearings using a
34 standardized form and format developed by the department, and
35 if the head physician of the institution does not concur in the
36 recommendation, he or she shall provide the primary care physician
37 with a written explanation of the reasons for denying the referral.

38 (d) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for medical parole by

1 contacting the head physician at the prison or the department.
2 Within 30 days of receiving the request, the head physician of the
3 institution shall, in consultation with the prisoner's primary care
4 physician, make a determination regarding whether the prisoner
5 meets the criteria for medical parole as specified in subdivision
6 (a) and, if the head physician of the institution determines that the
7 prisoner satisfies the criteria set forth in subdivision (a), he or she
8 shall refer the matter to the Board of Parole Hearings using a
9 standardized form and format developed by the department. If the
10 head physician of the institution does not concur in the
11 recommendation, he or she shall provide the prisoner or his or her
12 family member or designee with a written explanation of the
13 reasons for denying the application.

14 (e) The Department of Corrections and Rehabilitation shall
15 complete parole plans for inmates referred to the Board of Parole
16 Hearings for medical parole consideration. The parole plans shall
17 include, but not be limited to, the inmate's plan for residency and
18 medical care.

19 (f) Notwithstanding any other law, medical parole hearings shall
20 be conducted by two-person panels consisting of at least one
21 commissioner. In the event of a tie vote, the matter shall be referred
22 to the full board for a decision. Medical parole hearings may be
23 heard in absentia.

24 (g) Upon receiving a recommendation from the head physician
25 of the institution where a prisoner is located for the prisoner to be
26 granted medical parole pursuant to subdivision (c) or (d), the board,
27 as specified in subdivision (f), shall make an independent judgment
28 regarding whether the conditions under which the inmate would
29 be released pose a reasonable threat to public safety, and make
30 written findings related thereto.

31 (h) Notwithstanding any other ~~provision of~~ law, the board or
32 the Division of Adult Parole Operations shall have the authority
33 to impose any reasonable conditions on prisoners subject to medical
34 parole supervision pursuant to subdivision (a), including, but not
35 limited to, the requirement that the parolee submit to electronic
36 monitoring. As a further condition of medical parole, pursuant to
37 subdivision (a), the parolee may be required to submit to an
38 examination by a physician selected by the board for the purpose
39 of diagnosing the parolee's current medical condition. In the event
40 such an examination takes place, a report of the examination and

1 diagnosis shall be submitted to the board by the examining
2 physician. If the board determines, based on that medical
3 examination, that the person's medical condition has improved to
4 the extent that the person no longer qualifies for medical parole,
5 the board shall return the person to the custody of the department.

6 (1) Notwithstanding any other ~~provision~~ of law establishing
7 maximum periods for parole, a prisoner sentenced to a determinate
8 term who is placed on medical parole supervision prior to the
9 earliest possible release date and who remains eligible for medical
10 parole, shall remain on medical parole, pursuant to subdivision
11 (a), until that earliest possible release date, at which time the
12 parolee shall commence serving that period of parole provided by,
13 and under the provisions of, Chapter 8 (commencing with Section
14 3000) of Title 1.

15 (2) Notwithstanding any other ~~provisions~~ of law establishing
16 maximum periods for parole, a prisoner sentenced to an
17 indeterminate term who is placed on medical parole supervision
18 prior to the prisoner's minimum eligible parole date, and who
19 remains eligible for medical parole, shall remain on medical parole
20 pursuant to subdivision (a) until that minimum eligible parole date,
21 at which time the parolee shall be eligible for parole consideration
22 under all other provisions of Chapter 8 (commencing with Section
23 3000) of Title 1.

24 (i) The Department of Corrections and Rehabilitation shall, at
25 the time a prisoner is placed on medical parole supervision pursuant
26 to subdivision (a), ensure that the prisoner has applied for any
27 federal entitlement programs for which the prisoner is eligible,
28 and has in his or her possession a discharge medical summary, full
29 medical records, parole medications, and all property belonging
30 to the prisoner that was under the control of the department. Any
31 additional records shall be sent to the prisoner's forwarding address
32 after release to health care-related parole supervision.

33 (j) The provisions for medical parole set forth in this title shall
34 not affect an inmate's eligibility for any other form of parole or
35 release provided by law.

36 (k) (1) Notwithstanding any other ~~provision~~ of law, the
37 Department of Corrections and Rehabilitation shall give notice to
38 the county of commitment and the proposed county of release, if
39 that county is different than the county of commitment, of any

1 medical parole hearing as described in subdivision (f), and of any
2 medical parole release as described in subdivision (g).
3 (2) Notice shall be made at least 30 days, or as soon as feasible,
4 prior to the time any medical parole hearing or medical parole
5 release is scheduled for an inmate receiving medical parole
6 consideration, regardless of whether the inmate is sentenced either
7 determinately or indeterminately.

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